

COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

FILED

2013 JUN 28 P 3:52

CITY OF CLEVELAND, OHIO
c/o Mayor Frank G. Jackson
601 Lakeside Ave.
Cleveland, Ohio 44114,

Plaintiff,

v.

STEPHEN BUEHRER,
ADMINISTRATOR, OHIO BUREAU OF
WORKERS' COMPENSATION
30 W. Spring Street
Columbus, Ohio 43215-2256

Defendant.

Also serve:

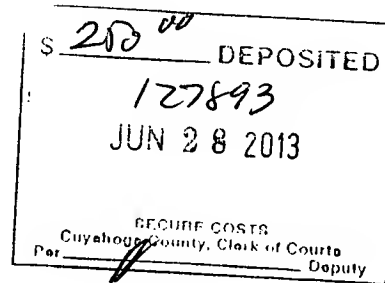
OHIO ATTORNEY GENERAL
MIKE DeWINE
30 E. Broad Street, 17th Floor
Columbus, Ohio 43215-3428

WINDOW 7
CASE NO. 13809883
CLERK OF COURTS
CUYAHOGA COUNTY

JUDGE _____

Complaint
CAROLYN B FRIEDLANI
CV 13 809883

COMPLAINT FOR EQUITABLE
RELIEF



Plaintiff the City of Cleveland, by and through Counsel, for its Complaint against
Stephen Buehrer, Administrator, Ohio Bureau of Workers' Compensation, in his official capacity
(hereinafter "Defendant BWC") states as follows:

CV13809883

80052446



INTRODUCTION

For many years, Defendant BWC has charged the City of Cleveland excessive and inequitable workers' compensation premiums, in violation of Ohio law. This inequity resulted from the BWC's knowing use for many years of a rating plan that undercharged Ohio's public employers who participated in a "group-rating" plan for workers' compensation premiums, and correspondingly overcharged Ohio's public employers, like Cleveland, who were not group-rated, for the respective risk they represented to the State Fund of Ohio. This equitable action is brought to seek disgorgement of the unlawfully-collected excess premiums paid by Cleveland pursuant to the BWC's unfair system.

PRELIMINARY STATEMENT

1. Plaintiff, City of Cleveland, Ohio ("Cleveland ") is a municipal corporation organized and existing under the laws of the State of Ohio and pursuant to a municipal charter.
2. Cleveland is public employer that participates in the Ohio Workers' Compensation program by making mandatory premium payments as prescribed by Defendant Bureau of Workers' Compensation ("Defendant BWC").
3. Cleveland has at all relevant times been categorized by Defendant BWC as a non-group-rated employer. As such, for many years up to and including 2010, Cleveland received BWC invoices for premiums in Cuyahoga County, Ohio, and Cleveland paid premiums as calculated by Defendant BWC for non-group-rated employers.
4. Cleveland asserts a claim in equity for unjust enrichment, because Defendant BWC's group-rating plan (hereinafter the "Plan") violates and exceeds the rule making authority granted to Defendant BWC pursuant to O.R.C. § 4123.29.

5. Cleveland is entitled to the repayment of all excessive premiums wrongfully received and retained by Defendant BWC pursuant to the illegal Plan.
6. Cleveland brings this suit in equity for the return of specific funds wrongfully collected and retained by Defendant BWC pursuant to the Plan, and this Court has jurisdiction over this matter pursuant to Ohio Revised Code § 2743.03(A)(2).
7. Venue is proper in this Court because many of the acts complained of occurred within the territorial jurisdiction of this Court, including the improper assessment of excessive premiums exacted from Cleveland.

BACKGROUND FACTS

8. The Ohio Bureau of Workers' Compensation group-rating Plan, introduced in 1991, permits employers, including Ohio public employers, to join a group for rating purposes and pool the risk of the employers in the group.
9. The Plan implemented by Defendant BWC provided experience rating plan credits to cities/municipalities (code #9431) and other public employers participating in the group rating Plan that substantially exceeded the actual credits justified by the group's loss experience.
10. The group experience rating credits accorded to group-rated public employers at all relevant times under the Plan decreased the amount of premium collected from such group-rated public employers to such a low level that the actual loss ratio of incurred losses to premiums collected for group-rated public employers is higher than the public employers' overall loss ratio. Premium collected from group-rated public employers was at all times material hereto inadequate to cover their claims costs.

11. Defendant BWC commissioned and has received actuarial studies demonstrating that the group discounts implemented by Defendant do not generate adequate premiums to cover claims costs for group-rated public employers.
12. Because Defendant BWC is revenue neutral, the above-described "undercharge" of group-rated public employers causes other non-group public employers, including Cleveland, to pay higher rates to make up the difference.
13. The premium inequity caused by the group rating Plan implemented by Defendant BWC substantially inflated the base rate charged to Cleveland and other non-group-rated public employers.
14. Defendant BWC and its consultants conducted numerous studies of the Plan, all of which concluded that the group-rating Plan was resulting in premium inequity between group-rated employers and non-group-rated employers.
15. Defendant BWC has known since the early 1990s that group-rated public employers were not paying enough premium to compensate for their losses and conversely, that non-group-rated public employers were paying too much premium and effectively subsidizing the substantial discounts accorded group-rated public employers.
16. The systematic undercharging of group-rated public employers directly impacts the base premium rate levels, and in particular has directly caused the wrongful and inequitable overcharging of Cleveland.
17. Defendant BWC has assessed and wrongfully charged Cleveland workers' compensation premiums far in excess of premiums charged to identically-situated and -occupational-classified group-rated public employers.

18. The excess premiums charged to Cleveland and other non-group rated public employers were imposed in connection with a prospective-experience rating system used by the BWC. The BWC established a prospective-rating system notwithstanding the requirement of O.R.C. § 4123.29 that the BWC establish a retrospective-experience rating system.
19. Defendant BWC has been unjustly enriched by the wrongfully collected and retained excess premiums charged to Cleveland, in violation of O.R.C. § 4123.29.

CLAIM FOR RELIEF

20. Cleveland incorporates and restates the allegations contained in Paragraphs 1-20 above, as if fully rewritten herein.
21. The group rating Plan is an invalid exercise of administrative authority, in contravention of O.R.C. § 4123.29, because it accords group discounts of such an excessive magnitude that it requires non-group-rated public employers in the same occupational classification as group-rated public employers to pay a premium subsidy to cover the cost of the excessive discounts.
22. Ohio Revised Code § 4123.34(C) requires "fixed and equitable rates" and provides that the purpose of the workers' compensation system is to conserve to each risk the basic principles of workers' compensation insurance.
23. The inequitable group rating Plan violates the requirement for fixed and equitable rates, and therefore conflicts with Ohio law.
24. Ohio Revised Code § 4123.29 expressly mandates the use of a retrospective rating system.

25. The prospective experience rating system utilized by BWC also violates the mandate of O.R.C. § 4123.29 that BWC use a retrospective rating system.
26. To the extent that Defendant BWC has assessed and collected excessive premiums from Cleveland, pursuant to the illegal group-rating Plan, Defendant has been unjustly enriched.
27. Because the group-rating Plan under which Defendant BWC has collected excessive premiums from Cleveland is illegal, Defendant BWC's collection and retention of those excessive premiums was and is wrongful.
28. Cleveland is entitled to restitution from Defendant and this Court is empowered in equity to order repayment of said amounts.

WHEREFORE, this Court should grant Cleveland the following relief:

- a) declare that the Ohio Group Rating Plan, as implemented by Defendant BWC and applied to public employers, violates Ohio Revised Code § 4123.29 and 4123.34;
- b) issue an Order in equity requiring Defendant BWC to disgorge and repay to Cleveland all excessive premiums collected by Defendant pursuant to the illegal group rating Plan;
- c) award Cleveland return on investment in connection with the excess premiums;
- d) award Cleveland pre-judgment and post-judgment interest;
- e) award Cleveland costs and attorneys' fees;
- f) award Cleveland such other and further relief as this Court may deem just.

Mitchell G. Blair

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Attorneys for Plaintiff



COMMON PLEAS COURT
CUYAHOGA COUNTY, OHIO

FILED

DESIGNATION FORM TO BE USED TO INDICATE THE CLASSIFICATION OF THE CAUSE

2013 JUN 28 P 3 52

Cty of Cleveland, Ohio

Plaintiff

Case No.

VS.

Stephen Beuhrer, Administrator, Ohio B.W.C.

Defendant

Judge: CAROLYN B FRIEDLAND

CV 13 809883

Has this case been previously filed & dismissed? Yes ☐ No ☒

Case #: Judge:

Is this case related to any cases now pending or previously filed Yes ☒ No ☐

Case #: CV-07-644950 Judge: McMonagle

CIVIL CLASSIFICATIONS: Place an (X) in ONE Classification Only.

Professional Torts:

- ☐ 1311 Medical Malpractice
☐ 1315 Dental Malpractice
☐ 1316 Optometric Malpractice
☐ 1317 Chiropractic Malpractice
☐ 1312 Legal Malpractice
☐ 1313 Other Malpractice

Product Liability:

- ☐ 1330 Product Liability

Other Torts:

- ☐ 1310 Motor Vehicle Accident
☐ 1314 Consumer Action
☐ 1350 Misc Tort

Workers Compensation:

- ☐ 1550 Workers Compensation
☐ 1531 Workers Comp. Asbestos

Foreclosures:

Utilize Separate Foreclosure
Designation Form

Commercial Docket

- ☐ 1386 (Temp. Sup. R. 1.03)
☐ 1390 Cognovit

Administrative Appeals:

- ☐ 1540 Employment Services
☐ 1551 Other

Other Civil:

- ☐ 1500 Replevin/Attachment
☐ 1382 Business Contract
☐ 1384 Real Estate Contract
☐ 1388 Consumer Debt
☐ 1391 Other Contract
☐ 1490 Foreign Judgment
☐ 1491 Stalking Civil Protection Order
☒ 1501 Misc Other
☐ 1502 Petition to contest Adam Walsh Act
☐ 1503 Certificate of Qualification for Employment

Amount of Controversy:

- ☒ None Stated
☐ Less than \$25,000
☐ Prayer Amount _____

Parties have previously attempted one of the following prior to filing:

- ☐ Arbitration
☐ Early Neutral Evaluation
☐ Mediation
☒ None

I certify that to the best of my knowledge the within case is not related to any now pending or previously filed, except as noted above

Calfee, Halter & Griswold LLP

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Phone

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Attorney of Record (Print or type)

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Signature

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Email Address

0010892

Supreme Court #

Print

FILED

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WINDOW 7
CLERK OF COURTS
CUYAHOGA COUNTY

THE STATE OF OHIO
Cuyahoga County

City of Cleveland, Ohio

VS.

Stephen Buehrer, Admin. Ohio Bureau of Workers' Comp.

IN THE COURT OF COMMON PLEAS
INSTRUCTIONS FOR SERVICE

No. _____

Judge _____

Date 06/28/2013

☐ ORDINARY MAIL

☐ PERSONAL SERVICE

NUMBER OF SERVICE ATTEMPTS

☒ CERTIFIED MAIL

☐ RESIDENCE SERVICE

SHOW ADDRESS FOR SERVICE IF DIFFERENT
FROM THE ONE SHOWN IN CAPTION

ADDITIONAL INSTRUCTIONS:

PLEASE ALSO SERVE VIA CERTIFIED MAIL:

Ohio Attorney General Mike DeWine

30 E. Broad Street, 17th Floor

Columbus, Ohio 43215-3428

Mitchell G. Blair
Plaintiff Attorney

Calfee, Halter & Griswold LLP
Firm Name

CLERK'S CERTIFICATE OF MAILING



Service of Process was sent by ordinary mail this _____ day of _____, _____

Answer day is 28 days after date of mailing – answer day _____

Attest: Andrea F. Rocco Clerk of Courts _____

Deputy